

Decision 01-06-076 June 28, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of San Diego  
Gas & Electric Company For Authority to  
Increase its Rates And Charges for Electric, Gas,  
and Steam Service, Effective January 1, 1993.  
(U 902-M)

Application 91-11-024  
(Filed November 15, 1991;  
Rate Design Window  
Segment Filed  
November 1, 1999)

**OPINION  
ON REQUEST FOR INTERVENOR COMPENSATION**

This decision grants Utility Consumer's Action Network (UCAN) an award of \$52,392.90 in compensation for its contribution to Decision (D.) 00-12-058.

**1. Background**

On December 21, 2000, the Commission adopted rate design revisions for San Diego Gas and Electric Company (SDG&E) in D.00-12-058 in the matter of the Rate Design Window (RDW) segment of this application. On February 20, 2001, UCAN filed its request for intervenor compensation for its contribution in the RDW segment of this proceeding. No party filed a reply to UCAN's request.

**2. Procedural Matters**

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

**3. Requirements for Awards of Compensation**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code

§§ 1801-1812. (All statutory citations are to the Pub. Util. Code.) Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer's<sup>1</sup> planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding. UCAN timely filed its request for an award of compensation on February 20, 2001. Under §1804(c), an intervenor requesting compensation must provide “a detailed description of services and expenditures and a description of the customer’s substantial contribution to the hearing or proceeding.” Section 1802(h) states that “substantial contribution” means that,

“in the judgment of the Commission, the customer’s presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural

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<sup>1</sup> To be eligible for compensation, an intervenor must be a customer as defined by Section 1802(b). In D.98-04-059 (footnote 14), we affirmed our previously articulated interpretation that compensation be proffered only to customers whose participation arises directly from their interests as customers. (See D.88-12-034, D.92-04-051, and D.96-09-040.)

recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

#### **4. Notice of Intent (NOI) to Claim Compensation**

Pursuant to Section 1804(a), a customer who intends to seek an award for intervenor compensation must file and serve on parties of record a notice of intent (NOI) to claim compensation. The filing must be made within 30 days after the prehearing conference is held. UCAN timely filed its NOI after the first prehearing conference for this RDW segment of the proceeding, and was found to be eligible to request intervenor compensation by ALJ ruling dated March 6, 2000.

#### **5. Substantial Contribution to Resolution of Issues**

As a basis for receiving intervenor compensation, UCAN must show that it made a "substantial contribution" to the resolution of issues in the proceeding. Per § 1802(h), a "substantial contribution" means that, in the judgment of the Commission, a party's presentation has substantially assisted the Commission in making its decision by there adopting one or more factual contentions, legal contentions, or policy or procedural recommendations presented by the party.

A party may make a substantial contribution in one of several ways.<sup>2</sup> It may offer a factual or legal contention upon which the Commission relied in making a decision,<sup>3</sup> or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted.<sup>4</sup>

As evidence that it made a substantial contribution to D.00-12-058, UCAN points to the Joint Recommendation (JR) to the Commission (Exh. 22). The JR was the product of a settlement among a number of parties, including UCAN, and presented recommendations to the Commission regarding marginal cost and cost allocation issues, as well as throughput/revenue and indexing issues. In addition to being one of the sponsors of the JR, UCAN had presented independent testimony (Exh. 15) in preparation for evidentiary hearings. UCAN states that all of its recommendations were adopted by the settling parties. UCAN also entered into a collateral settlement recommendation with Western Manufactured Housing Communities Association and SDG&E to resolve treatment of mobile home park residents in master meter disputes.

We agree that UCAN has made a substantial contribution to D.00-12-058 in its presentation of independent testimony and its supporting sponsorship of the JR. UCAN's testimony developed recommendations regarding marginal cost and cost allocation issues, as well as throughput/revenue and indexing issues that were incorporated into the JR. These recommendations were adopted by the Commission in D.00-12-058.

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<sup>2</sup> Section 1802(h).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

## 6. The Reasonableness of Requested Compensation

UCAN requests compensation of \$52, 522.90 as follows:

<u>Name</u>	<u>Number of Hours</u>	<u>Hourly Rate</u>	<u>\$ Total</u>
<u>UCAN Attorney Fees:</u>			
Michael Shames	139.9	\$195	\$ 27,280.50
<u>UCAN Miscellaneous Expenses:</u>			
Travel Costs			\$ 958.00
Copying & Postage			273.00
<u>JBS Energy Consultants Expert Witness Fees:</u>			
William Marcus	74.1	\$150	\$ 11,112.00
<u>Support Staff Fees</u>			
Jeffrey Nahigian	117.3	\$ 95	\$ 11,447.50
Gregory Ruzovan	8.7	\$ 95	\$ 826.00
Ron Faubion	2.0	\$ 65	\$ 130.00
<u>Miscellaneous JBS Energy Expenses:</u>			
Copying			\$ 213.12
Postage			\$ 167.94
Other			\$ 114.80
Total Claim for Compensation			<u>\$52,522.90<sup>5</sup></u>

### 6.1 Overall Benefits of Participation

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program

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<sup>5</sup> In its filing, UCAN’s total claim includes a \$100 arithmetic error in adding the individual claim amounts. Those amounts sum to \$52,522.90, rather than the \$52,622.90 as depicted in UCAN’s filing.

administration. (See D.98-04-059, *mimeo.* at 31-33, and Finding of Fact 42.) In that decision we discuss the requirement that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

We find UCAN's participation was productive in that the costs it claims for its participation were less than the benefits realized. Through UCAN's participation, the Commission had a better record on which to assess the reasonableness of the recommendations set forth in the JR. While it is difficult to put a dollar figure on the benefits UCAN realized for ratepayers, the adoption of the marginal cost numbers proposed by UCAN transformed a requested rate increase into a rate decrease for San Diego customers. We conclude that the benefits realized by UCAN's participation outweigh the costs it claims for that participation.

## **6.2 Hours Claimed**

### **6.2.1 Attorney's Fees**

UCAN documented Mr. Shames's claimed hours by presenting a daily breakdown of hours with a brief description of each activity. The hourly breakdown presented by UCAN reasonably supports its claim for total hours. Given the quality and comprehensiveness of the UCAN recommendations that were subsequently incorporated into the JR, we believe that the attorney hours claimed by UCAN warrant compensation. We comment below on certain aspects of the reporting methodology used in documenting the total hours claimed.

### **6.2.2 Hours Claimed for Travel**

In prior decisions, we have determined that travel time is compensable at one-half the normal hourly rate approved unless the claimant provides a detailed showing that the time was used to work on issues for which we grant compensation.<sup>6</sup> In its itemized documentation of hours presented here, UCAN has claimed travel time for its attorney at one half the usual rate (by reducing the hours charged by one-half), with the full hourly billing rate applied to the reduction in total hours. While this results in a correct adjustment, we again remind UCAN, as we did previously in D.00-03-051 and D.00-10-020, that we need to be able to identify travel time readily. UCAN should list total travel hours separately, and apply a rate of half that allowed for its attorney's professional work, rather than reducing the travel time by half and combining it with hours for professional work.

### **6.2.3 Hours Claimed for Preparation of Compensation Request**

In similar fashion, UCAN has reduced its claimed hours for preparing the intervenor compensation request by one half and included the result in its total hours for which the full hourly rate of \$195 is applied. As we have held in numerous prior decisions, compensation requests are essentially bills for services and do not require a lawyer's skill to prepare. Accordingly, we have reduced by one-half the attorney's rates applied to preparing the compensation request, except in cases where the compensation claim involves technical and legal analysis deserving of compensation at higher rates. As we have stated with respect to hours claimed for travel, we need to be able to identify the hours

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<sup>6</sup> See, for example, D.86-09-046, D.92-04-042, D.93-09-0086, and D.98-04-059.

claimed for preparation of compensation requests readily. While UCAN's calculation method results in the correct amount of compensation, its method of calculation does not properly segregate the hours claimed for preparing the intervenor compensation request. In any future requests, UCAN should therefore list hours claimed for preparing the compensation request separately, and apply a rate of half that allowed for its attorney's professional work, rather than reducing the claimed hours by half and lumping them in with hours claimed for professional work.

#### **6.2.4 Hours Claimed for Expert Witness and Consultant Support Staff**

UCAN also requested reimbursement for costs incurred to pay an expert witness and consultant support staff for hours charged in connection with this proceeding, as summarized in the tabulation above. The expert witness, William Marcus, prepared testimony that was instrumental in leading to the JR in which UCAN was one of the joint sponsors. In support of its claim, UCAN included copies of invoices documenting the billable hours that were charged to UCAN for the work of its expert witness and the consultant support staff. We conclude that the hours charged are properly documented and reasonable. We shall allow reimbursement for the hours charged for Marcus and the JBS Energy Consulting staff since they contributed to UCAN's overall work product.

### **6.3 Hourly Rates**

#### **6.3.1 Attorney's Fees**

UCAN requests compensation for attorney's fees at the rate of \$195/hour for Michael Shames. This is the hourly rate that we approved for him in a prior intervenor compensation request for work awarded in 1999, and using the same hourly rate for work performed in 2000 is reasonable.



### **6.3.2 Expert Witness Fees**

UCAN seeks reimbursement for the costs of its expert witness who produced substantiating work for UCAN's settlement proposals and who presented testimony on behalf of UCAN. We have previously approved the hourly rate of \$150 applied for this expert compensation, and using the same rate here is reasonable.

### **6.3.3 Consultant Support Staff Fees**

UCAN also seeks reimbursement for fees claimed for support staff of JBS Energy Consultants. The \$95 hourly rate claimed for two members of the support staff, Jeffrey Nahigian and Gregory Ruzzovan, were approved in prior intervenor compensation awards, and we find it reasonable to apply the same rates here.

In reference to Ron Faubion, UCAN provided no specific references documenting the basis for its requested rate of \$65/hour. UCAN merely claimed that the requested JBS staff hourly rates reflects levels that have been previously approved by the Commission with no citations provided. Yet, we find no prior Commission decision awarding the hourly rate claimed for Faubion of \$65/hour.

Our independent review indicates that the last Commission decision where intervenor compensation for Ron Faubion was considered was in D.00-09-068 (in A.97-12-020 et al.). In that proceeding, The Utility Reform Network (TURN) had requested intervenor compensation for Ron Faubion in the amount of \$50/hour. TURN sought to justify the \$50/hour rate by claiming that Faubion performed much the same work for JBS Energy as did his predecessor, Helmich, including preliminary analysis of data request responses, and other tasks related to the preparation and presentation of final testimony in that

proceeding. In D.98-08-016, we had approved a \$45/hour rate for similar work done by Helmich in 1996 and 1997.

TURN stated that although Faubion performed clerical tasks, JBS Energy only billed TURN for the portion of his time devoted to more "professional" tasks. We increased Helmich's compensation award in D.99-02-006 from \$45 to \$50/hour (for one hour of work at the higher rate) only after he had participated in many Commission proceedings. Because TURN's request represented the first compensation award for Faubion, we found an hourly rate of only \$45/hour reasonable.

We also considered a UCAN intervenor compensation request for work performed by Faubion in D.99-11-006. In that decision, we had declined to award any compensation for Faubion's time because the request was only for clerical work that was presumably already covered in overhead allowances.

Similar to our reasoning in D.99-11-006, we presume that clerical work is already covered in overhead allowances incorporated in professional fees. UCAN failed to show that Faubion's time was for anything other than clerical work. Because UCAN has failed to provide any justification for compensation for Faubion's time in this proceeding, we shall disallow any costs claimed for Faubion. Since two hours were claimed for Faubion, UCAN's compensation award is reduced by \$130 (i.e., 2 hours \* \$65/hour).

#### **6.4 Other Costs**

UCAN requests \$1,231.04 for other miscellaneous costs (e.g., copying postage, telephone) incurred directly in connection with its work in this proceeding. UCAN also requests reimbursement of \$595.86 for miscellaneous costs billed to it by JBS Energy Consultants for copying, postage, etc. We conclude that reimbursement of these costs is reasonable since they represent

reasonable expenditures that were incurred to support the work product of UCAN and its consultants in preparing testimony and in sponsoring the JR.

## **7. Award**

We award UCAN \$52,392.90, representing the claimed fees and costs, as described above, less \$130 disallowed for Ron Faubion and correcting the \$100 arithmetic error referenced above. Consistent with previous Commission decisions, we shall order that SDG&E pay this award, together with interest on the award amount (calculated at the three-month commercial paper rate), commencing on the 75<sup>th</sup> day after UCAN filed its compensation request and continuing until the utility makes full payment.

As in all intervenor compensation decisions, we put UCAN on notice that the Commission Staff may audit UCAN's records related to this award. Thus, UCAN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. UCAN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

## **Findings of Fact**

1. UCAN has made a timely request for compensation for its contribution to D.00-12-058.
2. UCAN has made a showing of significant financial hardship by demonstrating the economic interests of its individual members would be extremely small compared to the costs of participating in this proceeding.
3. UCAN has contributed substantially to this RDW segment of the proceeding through its presentation of expert witness testimony and its sponsorship of the JR, the results of which were adopted in D.00-12-058.

4. UCAN's participation was productive in that the costs claimed for its participation were less than the benefits realized.

5. The total hours claimed for the time of the attorney, expert witness, and consultant support staff are reasonable.

6. UCAN's requested hourly rates of \$195 and \$150 for its attorney and expert witness, respectively, are no greater than the market rates for individuals with comparable training and experience.

7. UCAN's requested hourly rates for its attorney and expert witness reflect amounts that have already been approved by the Commission for these individuals in prior intervenor awards.

8. The work rate of \$95 per hour is a reasonable compensation rate for the work of Jeffrey Nahigian and Gregory Ruszovan since compensation rates at this level have been approved for each of these individuals by the Commission in prior intervenor awards.

9. In D.99-11-006, the Commission disallowed UCAN compensation for work performed by Ron Faubion because the request was only for clerical work that was presumably already covered in overhead allowances.

10. The requested compensation of \$130 for Ron Faubion has not been justified since UCAN failed to provide any explanation or rationale indicating that the work performed by Faubion was anything other than clerical.

11. The requested reimbursement for miscellaneous costs incurred by UCAN, both directly and through JBS Energy Consultants, is reasonable.

#### **Conclusions of Law**

1. UCAN has fulfilled the requirements of §§ 1801-1812 which govern awards of intervenor compensation.

2. UCAN's requested claim for compensation of \$52,622.90 should be reduced by \$100 for an arithmetic error and \$130 for unjustified costs for Ron Faubion.

3. UCAN should be awarded \$52,392.90 for its contribution to D.00-12-058.

4. Per Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedure, the comment period for this compensation decision may be waived.

5. This order should be effective today so that UCAN may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. Utility Consumer's Action Network (UCAN) is awarded \$52,392.90 in compensation for its substantial contribution to Decision 00-12-058.

2. San Diego Gas & Electric Company (SDG&E) shall pay UCAN \$52,392.90 of award in total within 30 days of the effective date of this order. SDG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with

interest, beginning on the 75<sup>th</sup> day from the date the request was filed and continuing until full payment is made.

3. The comment period for today's decision is waived.
4. Application 91-11-024 is closed.

This order is effective today.

Dated June 28, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners